In The

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-208

EWALD B. NYQUIST, Commissioner of Education of the State of New York, et al.,

Appellants,

against

JEAN-MARIE MAUCLET,

Appellee.

EWALD B. NYQUIST, Commissioner of Education of the State of New York, et al.,

Appellants,

against

ALAN RABINOVITCH,

Appellee.

On Appeal from the United States District Courts for the Western and Eastern Districts of New York

BRIEF FOR APPELLEE MAUCLET

Kevin Kennedy
1520 Genesee Building
Buffalo, New York 14202

Michael Davidson
418 John Lord O'Brian Hall
State University of New York
Buffalo, New York 14260

Attorneys for Appellee Mauclet

Karen Davidson
Of Counsel

Daily Record Corporation
Rochester, New York

(2606)

Spaulding Law Printing
Syracuse, New York

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

In The

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-208

EWALD B. NYQUIST, Commissioner of Education of the State of New York, et al.,

Appellants,

against

JEAN-MARIE MAUCLET,

Appellee.

EWALD B. NYQUIST, Commissioner of Education of the State of New York, et al.,

Appellants,

against

ALAN RABINOVITCH,

Appellee.

On Appeal from the United States District Courts for the Western and Eastern Districts of New York

---

BRIEF FOR APPELLEE MAUCLET

Statement of the Case

Jean-Marie Mauclet is an immigrant to the United States. His ties to the United States are substantial: he is married to a United States citizen; he is the father of a United States citizen; at the time New York denied him assistance he had been a permanent resident of the United States for more than five years (A. 8, 49, 97).

Between 1974-76 Mauclet was a graduate student at the State University of New York at Buffalo. He applied for a tuition award for 1974-75 to assist in paying the annual $1200 tuition charge for his program (A. 50). He satisfied all the criteria for an award except citizenship; he had, for example, been a resident of New York all the time he had been a permanent resident of the United States (A. 8, 49, 50, 97). On the basis of his need, as defined by the state, he was entitled to the maximum annual award of $600 for graduate students (A. 50).[1] He was denied assistance because he had not petitioned for citizenship, and would not do so at that moment. His affidavit states:

> Although I am presently qualified to apply for citizenship and intend to reside permanently in the United States, I do not wish to relinquish my French citizenship at this time (A. 50).

Mauclet's claim is limited to the rights of immigrants.[2] Appellants argue that Education Law §661 (3) does not distinguish between immigrant and nonimmigrant students. Brief, p. 20 n. 1. However, nonimmigrants are barred by the statute's residency rule which requires one academic or calendar year of legal residence. N.Y. Educ. Law §661 (5) (a, b) (McKinney Supp. 1976-77). Appellants' instructions to students specifically state that only citizens or immigrants, not visiting students, may be legal residents (A. 94). This accords with the Immigration and Naturalization Act which limits the

[1]This fact is asserted in Mauclet's affidavit in support of his motion for summary judgment. Appellants answered neither Mauclet's complaint nor his affidavit.

[2]Throughout the brief the term immigrant will be used interchangeably with permanent resident or resident alien. The Immigration and Naturalization Act provides that "the term 'lawfully admitted for permanent residence' means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant. . . ." 8 U.S.C. §1101 (a) (20) (1970).

issuance of a student visa to "an alien having a residence in a foreign country which he has no intention of abandoning. . . ." 8 U.S.C. §§1101 (a) (15) (F), 1201 (a) (1970); 22 C.F.R. §41.45 (1975).

Second, his claim relates to the denial of tuition assistance. The tuition assistance program has several distinguishing features. It is intended to be a universal program. State residence, admission to an approved program, a demonstrated ability to complete a degree and a tuition obligation exceeding $200 are the only eligibility requirements, except for those imposed by the citizenship rule. No award may be made without need, and no award may exceed tuition and mandatory fees. The program is premised on the state's conclusion that assistance is necessary if higher education is to be enjoyed by all residents of the state who have the interest and ability to secure admission to an approved program of postsecondary education. The only residents denied this assistance are immigrants who are not ready to petition for naturalization at the time required by the state.

New York's Financial Assistance Program

1865-1961

The oldest of New York's present scholarship programs was established by the legislation incorporating Cornell University as the state's land grant college. 1865 N.Y. Laws ch. 585. The state appropriated to Cornell the proceeds of public land sales, and in return imposed obligations on the university. One was that it be open to students "without distinction as to rank, class, previous occupation or locality"; another was that it equalize opportunities through the state by accepting and not charging tuition to one student from each assembly district who succeeds in a competition. *Id.*, §9. There was no citizenship requirement, and none was added until 80 years later. 1945 N.Y. Laws ch. 510, §1 subd. 2. The direct descendant of the 1865 Act is the regents scholarship in Cornell University. N.Y. Educ. Law §605 (6) (McKinney Supp. 1976-77).

The regents college scholarship program followed. 1913 N.Y. Laws ch. 292, §1. It began as a modest program; 750 annual awards of $100 were distributed through the state. The awards were made in each county in accordance with academic achievement. Students were required to be residents of the county in which they competed for a scholarship. There was no citizenship requirement, and it was not until 1920 that the legislature enacted one. 1920 N.Y. Laws ch. 502.

Immediately after World War I, the legislature created a limited number of scholarships for honorably discharged soldiers, sailors, and marines. 1919 N.Y. Laws ch. 606. Recipients were required to be residents of New York State, but not citizens. This program was expanded in 1944 to cover veterans of World War II. Again, residence but not citizenship was required. 1944 N.Y. Laws ch. 418.

In 1936, the legislature created another special scholarship, this time for children of soldiers, sailors, and marines who died while serving in the armed forces of the United States, or as the result of service injuries. New York residence, but not citizenship, was required. 1936 N.Y. Laws ch. 834, §2. Subsequent enactments authorized awards to children who had a veteran parent who was a citizen and resident of New York at the time of his death, 1940 N.Y. Laws ch. 511, and children of other honorably discharged veterans, 1944 N.Y. Laws ch. 295. None of these enactments required that children recipients be citizens.

Beginning in 1949, the legislature created a number of scholarships for professional education in selected fields: medicine and dentistry, 1949 N.Y. Laws ch. 819; basic nursing, 1955 N.Y. Laws ch. 339, §14; engineering and science, 1956 N.Y. Laws ch. 798; and advanced nursing, 1956 N.Y. Laws ch. 890. All of these programs required legal residence in New York State; none required citizenship.

Each of these scholarship programs exists at present with modifications. None was created with a requirement that recipients be citizens, although two — the regents college scholarship and the Cornell scholarship — were amended to include one. The programs were limited in scope. At the time of the 1961 revision of state student aid programs, the number of annual scholarships, with the exception of those for veterans and engineers, was limited to 5% of the total number of students who graduated the preceding year from high schools in the state. 1957 N.Y. Laws ch. 756, §1, adding N.Y. Educ. Law §601 (2).

The 1961 Amendments

The tuition assistance program originated in 1961 in a comprehensive revision of state student assistance laws. Early in the legislative session Governor Rockefeller presented a special message proposing a major increase in financial assistance to students through a scholar incentive program for tuition expenses, and an expansion of the state's regents scholarship program. 1961 N.Y. Legis. Annual 366. The Governor's address referred to a need to educate the nation's citizens but additionally identified the progress of the state with "educational opportunity for all who have the desire and the capacity to make use of it." *Ibid.* The scholar incentive program was offered as a way to assist everyone who had been admitted to an institution of higher learning by providing "each full-time, tuition paying student attending an undergraduate college in the State, who is also a resident of the State . . . with an annual grant. . . ." *Id.* at 368. The same would be true for "each" tuition paying resident graduate student. *Ibid.* The Governor also proposed an expansion of the regents college scholarship program, which he described "as an encouragement to scholastic achievement and as a means of assuring educational opportunities for the specially talented. . . ." *Id.* at 369.

The legislature doubled the number of regents scholarships and created the scholar incentive program. 1961 N.Y. Laws ch. 389. In addition to the findings which appellants cite, the legislature declared that an enlarged program was necessary "not only for the specially talented, but for *all* who have the ability and ambition to achieve [higher education]. . . ." *Id.*, §1(e) (emphasis added).

The incentive program was created as an entitlement program. To be eligible a person needed to be a resident of New York State for an academic or calendar year and be admitted to an approved program of higher education. 1961 N.Y. Laws ch. 391, §4, adding Educ. Law §601-a (2). The statute also required that recipients evidence promise of successfully completing their degree requirements. *Ibid.* The program provided a maximum award for undergraduates of $300 a year, and a minimum of $100, depending on need. *Id.*, §601-a (4). The awards for graduates ranged between $200 and $800, again depending on need. *Id.*, §601-a (7). There was no requirement that recipients be citizens. The Board of Regents was not authorized to enact a citizenship requirement by rule.

By a separate act the legislature amended the sections of the Education Law governing five of its existing scholarship programs. Two of these scholarships already had citizenship requirements: the regents college scholarship and regents Cornell scholarship. The existing requirement was deleted, and a provision substituted requiring that recipients "meet the citizenship requirements prescribed by regents' rule." 1961 N.Y. Laws ch. 391, §§2, 18, amending N.Y. Educ. Law §§604, 5710 (McKinney 1969). Three other programs — medicine and dentistry, basic professional education in nursing, and advanced study in professional nursing — contained no citizenship requirement. They were all amended to require that recipients also "meet the citizenship requirements prescribed by regents' rule." *Id.*, §§7, 14, 19, amending N.Y. Educ. Law §§610, 611, 613 (McKinney 1969).

The State Education Department described the provisions of chapter 391 in a memorandum to the Governor. 1961 N.Y. Legis. Annual 130. The portion applicable to the citizenship requirement is reproduced here in full:

> This bill provides technical amendments to the various provisions of the Education Law in relation to scholarships which have been found by the Department to be desirable in the orderly administration of the scholarship program and in the interests of being fair to the participants therein.
>
> The bill initially provides for a uniform citizenship requirement which can be provided by a Regents rule. Under the current statute a person may be eligible for one scholarship and ineligible for another.

The only reasons, accordingly, for the citizenship provisions in chapter 391 were "orderly administration" and "fairness" to applicants. There is no indication of any interest in citizenship education or recruitment.

The legislature, then, distinguished between its two aid programs. One, the scholar incentive, was intended to benefit all college and university students in the state. All that would be required was admission to an institution of higher learning and state residence, but not citizenship. Five limited scholarship programs would be governed by a uniform citizenship rule prescribed by the regents.

The regents enacted a citizenship requirement for its scholarship programs. 8 N.Y.C.R.R. §145.4 (March 29, 1962). This rule was modified several times prior to its repeal in July 1969; at no time did it include scholar incentive awards. Between 1961 and 1969 citizen and immigrant were eligible on equal terms for tuition assistance.

The 1969 Amendments

The present citizenship requirement was enacted in 1969 and amended in 1975 to exempt paroled refugees. 1969 N.Y. Laws ch. 1154, adding N.Y. Educ. Law §602(2); amended 1975 N.Y. Laws ch. 663; presently N.Y. Educ. Law §661(3) (McKinney Supp. 1976-77).

On February 14, 1969, State Senator Dominick introduced S.4606 at the request of the Joint Legislative Committee to Revise and Simplify the Education Law ("Joint Legislative Committee"). The bill was reported to the Committee on Higher Education. The bill was also introduced in the Assembly as A.6491.

The bill is analyzed in Higher Education Staff Report No. 8, dated February 21, 1969.[3] The report indicates that the bill would economize in three ways. First, $8,000,000 would be saved by eliminating the minimum scholar incentive award to students whose parental net taxable income exceeded $10,000. The scholar incentive program, as originally enacted, provided for annual payment of $100 to every student no matter how great his parents' income. Second, an estimated $10,000 would be saved by making citizenship a requirement for tuition assistance. Third, there would be a reduction in awards after the first year of graduate study. On the expenditure side, the bill

[3]Staff Report No. 8 is reprinted in the appendix of this brief at B-2. It is on file in the New York State Library in two places: the Governor's Veto Jacket for S.5676-A, a vetoed amendment to ch. 1154, and a separate file of memoranda of the Joint Legislative Committee. It is referred to in a published memorandum of the Joint Legislative Committee, 1969 N.Y. Legis. Annual 214, and in Higher Education Staff Report No. 9, cited by appellants at page 15 of their brief. The published memorandum is reprinted in the appendix to this brief at B-13 to reflect several handwritten insertions and a statistical table not printed in the Legislative Annual. Higher Education Staff Report No. 9 is filed in the New York State Library in the bill jacket for 1969 N.Y. Laws ch. 1154 and is reprinted in the appendix to this brief at page B-16.

proposed, *inter alia*, an increase in the support of lower income undergraduate students, the award of five-year regents scholarships for certain programs, additional nursing and war veteran scholarships, and an eligibility standard for scholar incentive applicants based solely on admission to an approved program and not on any other academic standard established by the regents. The initial projection for net savings was $3,505,000 (B-4).

Every proposed change except one was justified by a stated policy objective. For example, the elimination of minimum awards for persons whose family incomes exceeded $10,000 would permit greater assistance to more needy students (B-5); the abolition of academic and test criteria for first-year scholar incentive applicants would assist disadvantaged youths (B-7); additional nursing scholarships would meet needs for trained nurses (B-9, 10).

The exception was the citizenship requirement for the scholar incentive program. The full explanation provided by the staff report was:

> *Comment:* Citizenship is presently required to be eligible for all award programs except scholar incentive. It is proposed that citizenship be made a uniform requirement. About fifty students would be affected by this change.
>
> *Budgetary Implication:* The estimated savings is $10,000 (B-8).

There is no indication that any objective would be served other than the saving of this sum.[4]

[4]There is also no indication of how the staff decided that fifty students would be affected by the change. It is likely that the number reflects a judgment that the actual number of people excluded would be small. There is no information in the record which shows the number of permanent residents

Footnote continued on next page

The following day the committee issued a memorandum superseding Staff Report No. 8 in several respects. Principally, the memorandum reflects a decision to retain the $100 minimum award for all undergraduates enrolled at that time; only new students would not receive the minimum award if their attributable incomes exceeded $10,000 (B-13). A new chart showing reduced fiscal year 1969-70 savings was prepared. It omitted any projection for savings from the imposition of a citizenship requirement (B-15).

The bill was amended further to provide minimum awards for persons with incomes up to $20,000, and renumbered S.4606-B. The final bill is described in Higher Education Staff Report No. 9, the document appellants cite for the history of the citizenship requirement. All that Staff Report No. 9 says about citizenship is:

> Other revisions contained in this proposal are described in this Committee's Staff Report No. 8. These provide for . . . (8) U.S. citizenship requirement for scholar incentive assistance (conforming to state scholarship provisions) (B-18).

Footnote continued from preceding page

attending approved programs of postsecondary education in New York. The one available statistic indicates that the number is small in relation to total enrollment. In fall 1972 there were 231,965 full-time students enrolled in the State University of New York; 226,800 were citizens; 5,165 were not. Only 847 non-citizens were permanent residents; the remainder were on temporary visas. Accordingly, permanent residents comprised only 0.3% of the total enrollment in the State University. Central Staff of Institutional Research, State University of New York, *Full-Time Credit Course Enrollment of Students at Institutions of the State University of New York by Citizenship Status and Visa Type, Fall 1972* (Jan. 19, 1977). This report, which is on file in the Office of Institutional Research, was compiled at our request. It is based on the data gathered by that office and reported in Office of Institutional Research, State University of New York, *Geographic Origins of Students, Fall 1972, Report No. 42*, p. 4, table 2.

The increase in the maximum income limit for minimum awards reduced the net fiscal year savings to $2,200,000 (B-18). The committee's table of savings again omitted any reference to the earlier projection that a citizenship requirement would save $10,000 (B-19).

The legislature then enacted a chapter amendment to S.4606-B to make the $20,000 maximum for minimum awards applicable immediately. The Joint Legislative Committee estimated that the amendment, S.5676-A, would produce a $900,000 saving for 1969-70 (B-20). Both bills were sent to the Governor. The State Education Department recommended approval of both. The Bureau of the Budget recommended approval of S.4606-B on several grounds: savings from the elimination of minimum awards for persons with incomes exceeding $20,000 would make money available to assist needy students; there would be a net fiscal saving of $2,200,000; there would be no need to reduce individual grants across the board by 5% to achieve an expenditure reduction required by the state's supplemental budget that year (B-21). The Bureau of the Budget indicated that public reaction could be expected on behalf of new undergraduates (with incomes over $20,000) who would not be eligible for a minimum award (B-24). There is no reference in the budget report to the citizenship requirement. No objective is stated, no budget implication noted, and no adverse public reaction anticipated.

The Governor vetoed S.5676-A as "unnecessary," 1969 N.Y. Legis. Annual 614, and approved S.4606-B, which became 1969 N.Y. Laws ch. 1154. His memorandum of approval states "the bill will do much within the limitation of available funds to further New York State's goal that no young man or woman with the capacity and the desire to seek a college education should be prevented from doing so for lack of financial resources." 1969 N.Y. Legis. Annual 588. However, the memorandum makes no attempt to reconcile this goal with a

requirement that would deny assistance to immigrants who were not prepared to petition for citizenship when required to do so by the state.[5]

SUMMARY OF ARGUMENT

The Education Law classifies New York residents on the basis of their citizenship or alienage. This requires the Court to examine with care the state's objectives and the means it chooses to achieve them. Neither the actual nor purported objective of the first citizenship requirement in 1920 is known. The extension of the requirement in 1961 was predicated on an interest in uniformity and orderly administration. The further extension of this requirement in 1969 to the tuition assistance program was based on a budget estimate that $10,000 could be saved by the requirement. The economic character of this discrimination is demonstrated by the state's history during the last 100 years of excluding aliens from professions and occupations. None of the actual objectives justifies the disadvantage under which aliens are placed.

The state claims that its true objectives are to encourage immigrants to become citizens and to educate citizen leaders. There are no state interests served by recruiting citizens. The state will neither gain representatives in Congress nor additional federal funds if it induces immigrants to become citizens. Although the state excludes immigrants who do not petition for naturalization as soon as possible, it provides assistance to citizens without any assurance that they will ever participate in New York's political community. The means the state has chosen to achieve its goals are neither necessary nor precise.

---

[5]The goal of educating every New York resident who demonstrates ability and interest in higher education continues to be repeated. Task Force on Financing Higher Education in New York State, *Higher Education in New York State, A Report to Governor Nelson A. Rockefeller* (1973). Governor's Memorandum Approving 1974 N.Y. Laws ch. 942, 1974 N.Y. Legis. Annual 409-10.

The citizenship requirement is also invalid under the supremacy clause. The objective of the Immigration and Naturalization Act is to foster family reunification and the immigration of persons with skills. The fulfillment of the full purposes and objectives of the Act requires that immigrants not be subjected to discrimination by the states. Immigrant relatives of citizens should be permitted to acquire education and skills and enter professions and occupations on equal terms with citizens for the benefit of the families which the Congress seeks to unify.

The Immigration and Naturalization Act requires a minimum period of residency before an immigrant may petition for naturalization but does not require that an immigrant petition within any period of time, or at all, and provides no inducements or penalties to encourage naturalization. The Act permits immigrants to resolve the important question of nationality without state imposed pressure. New York's attempt to induce immigrants to become citizens by threatening to deny them education assistance is inconsistent with the objectives of federal naturalization law.

I

The citizenship requirements of the New York Education Law deny to immigrants the equal protection of the laws.

The Education Law requires that an immigrant make a fundamental personal and political decision as a condition for receiving tuition assistance to which he is otherwise entitled. If he is eligible for naturalization, he must petition for it immediately. If he is not eligible, he must affirm his intent to apply for citizenship "as soon as he has the qualifications." N.Y. Educ. Law §661(3) (McKinney Supp. 1976-77). The decision to naturalize must be made on the state's timetable. Anyone who wishes additional time to decide does so at a price. Anyone who accepts the invitation of the United States to make this his permanent home but for a public or private reason chooses not to apply for citizenship will never receive tuition assistance.

A. *The Classification Created by the Education Law is Based on Alienage.*

Appellants argue that the statute differentiates classes of aliens and does not discriminate between citizens and immigrants. In their view, differentiation among aliens is supported by this Court's decision that Congress may limit the participation of aliens in federal medical insurance programs to permanent residents who have resided in the United States five or more years. *Mathews v. Diaz*, 426 U.S. 67 (1976). The Court, however, took care in *Mathews* to emphasize that it was an act of Congress, not that of a state, which was involved. *Id.* at 84. The power of the federal government to control the entrance and residence of aliens and the foreign policy implications of decisions concerning aliens "dictate a narrow standard of review of decisions made by the Congress or the President in the area of immigration and naturalization." *Id.* at 82. States, however, may be prohibited from establishing the very classifications

which the federal government may utilize. *Id.* at 85. This Court's conclusion was explicit:

> [T]he Fourteenth Amendment's limits on state powers are substantially different from the constitutional provisions applicable to the federal power over immigration and naturalization. *Id.* at 86-7.[6]

The classification here is based on alienage. An immigrant may avoid its consequences only if he changes his class, or declares that he will do so in the shortest time possible. The district court rejected the state's argument, as follows:

> This argument defies logic. Those aliens who apply, or agree to apply when eligible, for citizenship are relinquishing their alien status. Because some aliens agree under the statute's coercion to change their status does not alter the fact that the classification is based solely on alienage (A. 99).

New York's exclusion of aliens who do not naturalize on the state's timetable makes this case indistinguishable from those in which classifications which disadvantage aliens are examined with care. *Graham v. Richardson*, 403 U.S. 365 (1971); *Sugarman v. Dougall*, 413 U.S. 634 (1973); *In re Griffiths*, 413 U.S. 717 (1973); *Examining Board v. Otero*, 96 S.Ct. 2264 (1976). It is not relevant that an immigrant might avoid a burden placed impermissibly on aliens by ceasing to be one. In both majority and dissent, this Court noted that the bar applicant in *Griffiths* was eligible to apply for citizenship but had no intention of doing so. 413 U.S. at 718 n.1, 650. Neither has it mattered that a state classification places some aliens together

---

[6]Ironically, Medicare eligibility for immigrants begins where eligibility for tuition assistance may end. Congress decided that five years of permanent residence demonstrates the strength of an alien's ties. An immigrant is then eligible whether or not he petitions for naturalization. In New York, five years of permanent residence, the generally required period of residence prior to naturalization, ends an immigrant's eligibility unless he petitions for naturalization. As long as he does not petition he remains ineligible, no matter how long he resides in this country.

with citizens and apart from other aliens. In *Graham* citizens and aliens who had resided fifteen years in the United States were classified together; all other aliens were classified separately.

Accordingly, "the governmental interest claimed to justify the discrimination is to be carefully examined in order to determine whether that interest is legitimate and substantial, and inquiry must be made whether the means adopted to achieve the goal are necessary and precisely drawn." *Examining Board v. Otero*, 96 S.Ct. at 2282-83.

B. *The Actual Objective of the Citizenship Provision in Question has Nothing to do With Preserving or Strengthening New York's Political Community.*

The state argues that it is concerned with "survival" and that its objective is to strengthen its political community by educating citizen leaders and encouraging immigrants to become citizens. It is doubtful whether this is the actual basis for excluding immigrants who are not prepared to petition for naturalization at the time the state requires.

Appellants emphasize the legislative findings and declarations which introduce the act establishing the scholar incentive program. 1961 N.Y. Laws ch. 389, §1. This introductory matter refers, in one subdivision, to the state's interest in "the individual development of the maximum number of citizens. . . ." *Id.*, §1(a). The act created no citizenship requirement, however. These findings and declarations — another speaks of educating "all who have the ability and ambition" — were consistent with an enactment which required legal residence, but not citizenship.

Citizenship requirements have been an afterthought throughout the history of New York's financial assistance laws. Not one of the components of New York's present system was enacted, as an original matter, with a citizenship requirement. No history has been offered to indicate why a citizenship

requirement was added to the regents college scholarship program in 1920, or to the Cornell scholarship program in 1945, although it may be speculated that both requirements have war-time origins. Appellants note that the regents adopted a rule on July 19, 1917, requiring that scholarship recipients swear an oath of allegiance to the United States and the State of New York. Brief, p. 10 n. 2.

A little more is known about the 1961 enactment which called for a regents citizenship rule for three limited scholarship programs in addition to the regents college scholarship and Cornell scholarship programs. The objectives there were "uniformity," "orderly administration," and fairness among applicants. 1961 N.Y. Legis. Annual 130. There is no explanation, however, why the interests of uniformity, orderly administration, and fairness required the extension of the citizenship rule rather than its elimination.

The present citizenship requirement was proposed in 1969 to save $10,000 by "conforming" the scholar incentive program to the regents scholarship program. No other justification was offered. There is no hint in the legislative documents of any concern with citizenship education or recruitment. The Joint Legislative Committee, whose bill it was, its staff, the state budget office, and the Governor all focused their attention elsewhere as the legislature reworked assistance formulas involving thousands of students and millions of dollars. The savings anticipated from a citizenship requirement disappeared from the amended tables showing the fiscal consequences of the 1969 act. Nevertheless, the citizenship requirement was enacted. In the end, the only justification expressed was the first to be offered, the saving of a small sum of money at the expense of a small number of immigrants.

More may be known about the state's objectives by a review of the history of its laws concerning the status of citizens and aliens.

At first, this legislation concerned office holding, voting, jury service, military service, and real property. The first constitution of the state, adoped in 1777, gave the right to vote to resident male inhabitants, without any express limitation as to citizenship. There was a property requirement, however, that persons possess freeholds or rent tenements of stated values, and a requirement of an oath of allegiance to the state. Similarly, there was no stated citizenship requirement for office holders, although the governor and senators were required to be freeholders. N.Y. Const. of 1777, art. VII, VIII, X, XVII. The second constitution, ratified in 1822, specifically granted the right to vote to citizens and required that the governor be a native citizen. N.Y. Const. of 1822, art. II, §1, art. III, §2. Citizenship was made a requirement for all civil offices in the Revised Statutes of 1827-28, ch. V, title VI, art. 1, §1, which also reaffirmed the right of citizens to vote, *id.*, ch. VI, title I, §1, and to serve in the militia, *id.*, ch. X, title I, §1.

By 1825 it was clear that aliens were excluded from public office, voting, and jury service. In that year, the legislature granted aliens the rights enjoyed by citizens to hold, sell, assign, and devise real property, provided that the alien depose that he was a resident of the United States, intended always to be a resident, and intended to become a citizen as soon as he could be naturalized. 1825 N.Y. Laws ch. 307, §1. The legislature then specifically provided that alien land holders would be subject to military duty and all taxes owed by citizens, but would not be eligible to hold elected or appointed civil office, vote, or, as a general matter, serve on juries. *Id.*, §4.

New York, accordingly, acted during the first fifty years of independence to define its "political community." *Sugarman v. Dougall*, 413 U.S. at 647-49. It did so in terms of office holding, voting, and jury service, activities which are at the heart of representative government. Its conclusions were strikingly similar to those of the members of the First Congress who debated the first naturalization act. In their opinion, three state matters turned on the question of citizenship: eligibility for

office, the right to vote, and the right to own land. 1 Annals of Cong. 1147-64 (Gales & Seaton eds. 1790). Land holding aside,[7] the common perception of the First Congress and the State of New York, at an earlier time, was that a political community is defined by the rights to hold office, vote, and serve on juries, and that aliens may be excluded from these activities. As to economic opportunity, through land holding, the direction of New York law was to equality between citizen and alien.

The character of state legislation concerning aliens changed after the Civil War. First in 1871, and then with increasing frequency as the rate of immigration increased, New York enacted a succession of statutes requiring citizenship, or a declaration of intention to become a citizen, for no fewer than thirty-eight occupations and professions. Some have been legislatively repealed or modified, or invalidated by this Court; those not repealed or finally invalidated are italicized. By order of enactment, citizenship requirements have been imposed for attorneys,[8] *pawnbrokers*,[9] *grand jury stenographers*,[10] *plumbing inspectors*,[11] laborers on public employment

---

[7]The land issue has its peculiar common law history. Exclusion of alien land holding originated in feudal times. There are now only a dozen states with substantial restrictions on alien land ownership. Morrison, *Limitations on Alien Investment in American Real Estate*, 60 Minn. L. Rev. 621 (1976).

[8]1871 N.Y. Laws ch. 486; implemented by Rules of the Court of Appeals, *id.*, p. 2195; currently, N.Y. Jud. Law §460 (McKinney 1968). The statute has no force following *In re Griffiths, supra*, but has not been repealed.

[9]1883 N.Y. Laws ch. 339; currently, N.Y. Gen. Bus. Law §41 (McKinney 1968).

[10]1885 N.Y. Laws ch. 348; currently, N.Y. Jud. Law §322 (McKinney Supp. 1976-77).

[11]1892 N.Y. Laws ch. 602; currently, N.Y. Gen. City Law §48 (McKinney 1968).

projects,[12] *traffickers in liquor,*[13] certified public accountants,[14] *blind adult vendors of goods and newspapers,*[15] *private investigators,*[16] *certified shorthand reporters,*[17] ship masters, pilots and engineers,[18] *bank directors and trustees,*[19] architects,[20] *state police officers,*[21] *teachers,*[22] *surveyors,*[23]

[12] 1894 N.Y. Laws ch. 622; currently, N.Y. Labor Law §222 (McKinney Supp. 1976-77). Ruled invalid *C.D.R. Enterprises v. Board of Education,* 412 F. Supp. 1164 (E.D.N.Y.), *aff'd,* 45 U.S.L.W. 3455 (U.S. 1977).

[13] 1896 N.Y. Laws ch. 112, §23; currently, Alco. Bev. Cont. Act §126 (3) (McKinney Supp. 1976-77).

[14] 1896 N.Y. Laws ch. 312; repealed 1971 N.Y. Laws 987, enacting N.Y. Educ. Law §7404 (6) (McKinney 1972).

[15] 1899 N.Y. Laws ch. 631; currently, N.Y. Gen. City Law §10 (McKinney 1968).

[16] 1909 N.Y. Laws ch. 529, §1, amending Gen. Bus. Law §71 (1); currently, N.Y. Gen. Bus. Law §72 (1) (McKinney Supp. 1976-77).

[17] 1911 N.Y. Laws ch. 587; currently, N.Y. Educ. Law §7504 (6) (McKinney 1972).

[18] 1913 N.Y. Laws ch. 765, §4; repealed 1962 N.Y. Laws ch. 672.

[19] 1914 N.Y. Laws ch. 369; currently, N.Y. Banking Law §§246 (3), 375 (6), 397 (2) (a) (McKinney Supp. 1976-77).

[20] 1915 N.Y. Laws ch. 454; repealed 1971 N.Y. Laws ch. 987, adding N.Y. Educ. Law §7304 (6) (McKinney 1972).

[21] 1917 N.Y. Laws ch. 161, adding Exec. Law §94; currently, N.Y. Exec. Law §215 (3) (McKinney Supp. 1976-77). The constitutionality of this statute was sustained in *Foley v. Connelie,* 419 F. Supp. 889 (S.D.N.Y.), *juris. statement filed.*

[22] 1918 N.Y. Laws ch. 158; currently, N.Y. Educ. Law §3001 (3) (McKinney 1970). The statute was invalidated in *Norwick v. Nyquist,* 417 F. Supp. 913 (S.D.N.Y.), *juris. statement filed.*

[23] 1920 N.Y. Laws ch. 775, adding Gen. Bus. Law §39-e (2); currently, N.Y. Educ. Law §7206-a (6) (McKinney 1972).

operators of billiard and pocket pool halls,[24] *medical doctors,*[25] *pharmacists,*[26] *real estate brokers,*[27] embalmers and undertakers,[28] *engineers,*[29] *dentists,*[30] *forest preserve guides,*[31] nurses,[32] competitive class of the civil service,[33] *racing track*

[24] 1922 N.Y. Laws ch. 671; currently, N.Y. Gen. Bus. Law §461 (McKinney Supp. 1976-77).

[25] 1923 N.Y. Laws ch. 496; currently, N.Y. Educ. Law §6524 (6) (McKinney 1972). Declared unconstitutional in *Surmeli v. State of New York,* 412 F. Supp. 394 (S.D.N.Y. 1976), *appeal pending.*

[26] 1924 N.Y. Laws ch. 338, §2; currently, N.Y. Educ. Law §6805 (6) (McKinney 1972).

[27] 1926 N.Y. Laws ch. 831; currently, N.Y. Real Prop. Law §440-a (McKinney 1968).

[28] 1929 N.Y. Laws ch. 370; deleted 1971 N.Y. Laws ch. 854 (McKinney Supp. 1976-77).

[29] 1931 N.Y. Laws ch. 678; currently, N.Y. Educ. Law §7206 (6) (McKinney 1972). Declared unconstitutional in *Kulkarni v. Nyquist,* 76-CV-344 (N.D.N.Y., Jan. 5, 1977).

[30] 1933 N.Y. Laws ch. 609, §3; currently, N.Y. Educ. Law §6604 (6) (McKinney 1972).

[31] 1938 N.Y. Laws ch. 40, adding Cons. Law §183; currently, N.Y. Env. Cons. Law §11-0533 (2) (McKinney 1973).

[32] 1938 N.Y. Laws ch. 472; repealed 1971 N.Y. Laws ch. 987, enacting N.Y. Educ. Law §6904 (6) (McKinney 1972).

[33] 1939 N.Y. Laws ch. 767; currently, N.Y. Civ. Serv. Law §53 (McKinney 1973). Invalidated, *Sugarman v. Dougall, supra.*

pari-mutuel employees,[34] *funeral directors,*[35] *veterinarians,*[36] psychologists,[37] *dental hygienists,*[38] employees of private institutions acquired by the state,[39] *landscape architects,*[40] *chiropractors,*[41] *masseurs and masseuses,*[42] *physical therapists,*[43] and *animal health technicians.*[44]

---

[34] 1940 N.Y. Laws ch. 254; currently, N.Y. Unconsol. Laws §§7973, 8027 (McKinney 1961).

[35] 1944 N.Y. Laws ch. 647, adding Pub. Health Law §299-c; currently, N.Y. Pub. Health Law §3421 (2) (a) (McKinney Supp. 1976-77).

[36] 1956 N.Y. Laws ch. 176; currently, N.Y. Educ. Law §6704 (6) (McKinney 1972).

[37] 1956 N.Y. Laws ch. 737; repealed 1971 N.Y. Laws ch. 987, §2, enacting N.Y. Educ. Law §7603 (6) (McKinney 1972).

[38] 1957 N.Y. Laws ch. 553, currently N.Y. Educ. Law §6609 (6) (McKinney 1972).

[39] 1958 N.Y. Laws ch. 790; currently, N.Y. Civ. Serv. Law §45 (McKinney 1973). Undoubtedly invalid under *Sugarman v. Dougall, supra.*

[40] 1960 N.Y. Laws ch. 1082; currently N.Y. Educ. Law §7324 (6) (McKinney 1972).

[41] 1963 N.Y. Laws ch. 780; currently, N.Y. Educ. Law §6554 (6) (McKinney 1972).

[42] 1967 N.Y. Laws ch. 776; currently, N.Y. Educ. Law §7804 (6) (McKinney 1972).

[43] 1971 N.Y. Laws ch. 987; currently, N.Y. Educ. Law §6534 (6) (McKinney 1972). This statute has been declared unconstitutional in *Jackson v. Nyquist,* 76-CV-360 (N.D.N.Y., Jan 5, 1977).

[44] 1976 N.Y. Laws ch. 539, §7, adding N.Y. Educ. Law §6711 (6) (McKinney Supp. 1976-77).

There is little to unify this list other than a conclusion that when the state controls entry into an occupation, it frequently favors citizens.[45] It is a history of economic discrimination, and it sheds light on the state's objectives here. The imposition of a citizenship requirement on applicants for tuition assistance followed soon after the imposition of a requirement on masseurs and immediately preceded the imposition of one on physical therapists. The economic character of this discrimination is underscored by the legislative history of the 1969 act. The citizenship requirement was predicated on a relatively insignificant saving at the expense of a small number of immigrants. There is no evidence that anyone, prior to this action, viewed the citizenship requirement as a way to strengthen New York's political community.

C. *The Actual Objectives of the State — Uniformity, Orderly Administration, and a Slight Reduction in Program Costs — Do Not Justify New York's Citizenship Requirement.*

The state makes no attempt to justify its citizenship requirement on the basis of its actual objectives. Indeed, it could not. Uniformity and administrative orderliness may be achieved just as well by no citizenship requirement, and fiscal justifications for state discrimination are firmly rejected by this Court. *Graham v. Richardson,* 403 U.S. at 376; *Sugarman v. Dougall,* 413 U.S. at 645-46; *Hampton v. Mow Sun Wong,* 426 U.S. 88, 96 (1976). The fiscal argument is a species of the

---

[45] The state legislature enacted a bill in 1955 requiring citizenship or a declaration of intention in order to practice veterinary medicine. The State Department of Education's memorandum to the Governor, recommending approval, noted that practically all state laws regulating professions required citizenship. The memorandum stated no other reason for applying a citizenship requirement to the practice of veterinary medicine, other than that licensing "is one of the emoluments which attach to persons who support our form of government." 1955 N.Y. Legis. Annual 160.

discredited special-public-interest doctrine which at one time permitted states to limit resources to citizens. Immigrants contribute to the resources of the nation and the states in which they live; there is no basis to exclude them from the use of these resources. *Sugarman v. Dougall,* 413 U.S. at 645.

The state does not defend its actual objectives. The question remains whether its claimed objectives justify the statute.

D. *Neither the State's Claimed Objectives nor the Means the State has Selected to Achieve Them Justify the Discrimination Imposed.*

The state contends that its "preservation" and "survival" are at stake. It is difficult to fathom how the education of an immigrant might threaten the State of New York. The legislature is concerned about the need for educating large numbers of people so that the state might survive and prosper. But it is not the ultimate objective of the total program which needs to be examined. Rather, it is "the governmental interest claimed to justify the discrimination" which must be scrutinized. *Examining Board v. Otero,* 96 S.Ct. at 2282.

1. *Citizen Recruitment is not a Substantial State Interest, and May not be an Appropriate One.*

The state asserts an interest in increasing the number of its citizens by providing immigrants with a financial inducement to petition for naturalization. There is no benefit which the State of New York may receive from the conversion to citizenship of immigrants residing in New York. No state stands to gain any representatives in Congress by the naturalization of immigrants. Representatives are apportioned according to "the whole number of persons in each State." U.S. Const. amend. XIV, §2. Immigrants are persons for the purpose of the equal protection clause of the fourteenth amendment. *Yick Wo v. Hopkins,* 118 U.S. 356 (1886). They are persons for the apportionment clause

of the same amendment. Indeed, they are enumerated as residents by the Bureau of Census, on whose population statistics apportionment is based. H.R. Rep. No. 91-1314, 91st Cong., 2nd Sess. 5 (1970). All citizens of foreign countries who are studying or working in the United States are enumerated; only persons temporarily traveling or visiting in the United States or persons living on the premises of embassies or consulates are excluded. *Id.* at 24. In addition to apportionment, the census of resident population is the basis for distributing significant amounts of federal assistance to the states. *E.g.,* State and Local Fiscal Assistance Act of 1972, Pub. L. No. 92-512, §109(a) (1), 86 Stat. 919; Housing and Community Development Act of 1974, Pub. L. No. 93-383, §102(a) (7), 88 Stat. 633. A state may have an interest in the number of its residents, but not whether they are citizens or immigrants.

Additionally, it is the responsibility of the national government rather than the states to decide whether aliens should be given financial incentives to become citizens. Immigrants become citizens by virtue of federal, not state, law. Even within the federal government, only the Congress or the President, in his sphere, may decide whether incentives should be provided. *Hampton v. Mow Sun Wong,* 426 U.S. at 104-5. The federal government funds and administers a large student assistance program and does not use the possible denial of assistance as a means to induce immigrants to become citizens. All federal student assistance programs are available to citizens and permanent residents on equal terms.[46] The fact that the national

---

[46] In 1958 Congress enacted the National Defense Education Program to provide loans and fellowships to students. 20 U.S.C. §§401-589 (1970). There is no citizenship requirement, although an oath of allegiance is mandated. Non-citizens may take this oath in good faith. *In re Griffiths,* 413 U.S. at 726 n.18. Also, the regulations of the Office of Education provide that a student is eligible if he is either a national of the United States, *or* "is in the United States for other than a temporary purpose and

Footnote continued on next page

government, with its pre-eminent interest in citizenship, does not use educational assistance as an inducement to aliens to naturalize suggests that neither the Congress nor the Executive Branch consider the possible denial of assistance to be a necessary or appropriate means of persuading immigrants to naturalize.

The state neither has anything practical to gain nor a proper role to perform in using financial pressure to encourage immigrants to petition for naturalization. Its "concern for attracting new citizens," appellants' brief, p. 23, does not justify the denial of assistance to immigrants who do not wish to naturalize or, as Mauclet, have simply not yet decided.

Footnote continued from preceding page

intends to become a permanent resident thereof." 45 C.F.R. §144.7 (a) (1) (1976). A similar provision makes immigrants eligible for the National Defense Fellowship Program. 45 C.F.R. §145.6 (d) (1976).

Then, starting with the Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219, and continuing with the Education Amendments of 1972, Pub. L. No. 92-318, 86 Stat. 235, Congress enacted extensive loan and grant programs for students in institutions of higher learning. 20 U.S.C. §§1070-1087c (1970 & Supp. V 1975). These programs include a basic educational opportunity grant, an entitlement program similar to the New York tuition assistance program, 20 U.S.C. §1070a, supplemental grants, *id.*, §1070b, grants to states to establish student incentive grant programs, *id.*, §1070c, and loans, *id.*, §1071. There is no citizenship requirement in any of these statutes, and no oath of allegiance is required. Moreover, the regulations governing each of these programs all make immigrants eligible without any requirement that they seek citizenship. For example, the regulation governing the basic educational opportunity grant program provides:

> A student is eligible to receive a Basic Educational Opportunity Grant under this part if he . . . (3) Is a citizen or national of the United States or is in the United States for other than a temporary purpose and is, or intends to become, a permanent resident thereof, or is a permanent resident of the Trust Territory of the Pacific Islands.

45 C.F.R. §190.3(a) (3) (1976). See also *id.*, §176.9 (a) (1) (supplemental opportunity grants); *id.*, §177.2 (a) (4) (loans to students in institutions of higher learning); *id.*, §178.2 (4) (loans to vocational students); *id.*, §192.6 (state student incentive grant programs).

2. *Neither the State's Objective of Training Citizen Leaders, Nor the Means it has Chosen to do so, Justify the Citizenship Requirement.*

The state also asserts that its objective is to train "citizen leaders," *id.*, at 20, and "seek complete political participation from all who reside within its borders to the extent of their individual capacities." *Id.* at 22. As the state sees it, "the excluded alien eschews the very identification with the state and the United States which the programs seek to engender." *Id.* at 23. Thus, the state appears to argue, the objective of the statute is not fulfilled by educating immigrants who fail to apply for citizenship as soon as they are eligible to do so.

The state seriously misapprehends its own statute. The law has multiple goals. The education of citizen leaders may be one objective, but this goal exists side by side with the education of professional and technical manpower generally. The State Education Department estimates that 370,047 students will receive tuition assistance during the current academic year. Education Department, *Education Statistics New York State* 13 (Jan. 1977). They will study in a variety of institutions and programs: approved college programs, hospital school programs of professional nursing, two-year programs in registered private business schools, degree programs in trade or technical schools (A. 87-8). Some graduates undoubtedly will exercise political leadership. Some will find leadership roles outside politics — in education, the professions, business, or the arts. There is no law which precludes immigrants from seeking these leadership roles. Many will simply utilize their education to obtain better jobs.

There is also no guarantee that prospective citizen leaders will participate in New York's political community, or any other. Citizens are not required to vote; neither are exit visas required. The state seeks no commitment from citizen recipients of assistance that they will remain in the United States or in New York, nor does it require that its future "citizen leaders" register

and vote. These are voluntary undertakings; to require otherwise would raise serious constitutional questions.

Even if the state is entitled to grant or deny aid on the basis of a prediction whether a person will participate in the political process, the means it has selected to make the prediction is neither necessary nor precisely drawn. The favored citizen may never vote or seek office. He may move from New York or from the United States. The immigrant, on the other hand, may decide at a future time to become a citizen, reside in New York, and vote.

E. *The Interests of Immigrants in this Matter are Substantial.*

New York has made the judgment that persons whose incomes are below stated levels need assistance if they are to receive a higher education. This judgment is as valid for immigrants below the levels fixed as it is for citizens. The denial of assistance may mean the denial of an education. The consequence of that denial is severe in an economy which often demands that job applicants satisfy high educational requirements. The state imposes educational requirements for many positions in its own civil service, and additionally imposes educational requirements for licenses it issues: *e.g.*, teachers, N.Y. Educ. Law §3001 (2) (McKinney Supp. 1976-77); doctors, *id.*, §6524 (2) (McKinney 1972); physical therapists, *id.*, §6534 (2); chiropractors, *id.*, §6554 (2), etc. It also imposes a duty on male immigrants and citizens alike to support their families. N.Y. Fam. Ct. Act §§412-13 (McKinney 1975).

The immigrant, whether or not he will petition for naturalization, participates in the economy and shares the obligations of citizens. This Court has previously noted the obligation of immigrants to pay Federal taxes as well as serve in the armed forces. *In re Griffiths*, 413 U.S. at 722. Immigrants residing in New York, like New York citizens, are "resident

individuals" and subject to New York's personal income tax. N.Y. Tax Law §605 (a) (McKinney 1975). They contribute, along with citizens, to a state budget out of which $1,245,200,000 has been appropriated this fiscal year to support postsecondary education. The Regents Statewide Plan for the Development of Postsecondary Education 117 (1976).[47] The government contribution to all institutions of higher learning in New York amounts to more than a third of the annual revenues of these institutions. *Id.* at Table B-17. The state does not insist that immigrants be naturalized before they may be taxed.

There is an important non-financial interest involved. The state requires that immigrants who are eligible for citizenship apply before they may receive assistance, or that those who are not yet eligible declare that they will apply as soon as eligible. The naturalization laws of the United States, as will be discussed subsequently, do not impose any outer limit on the time an immigrant may petition for naturalization. As long as the immigrant retains his continuous residence and his good character, the naturalization laws in no way act to hurry his decision. The decision whether to be naturalized is of great significance to an immigrant. He has a deep interest in being able to make that decision free of financial pressures created by a state law.

---

[47] $198.1 million of the total is direct aid to students. Tuition and scholarship assistance is viewed by all concerned as one of several ways in which governments finance postsecondary education. Regents Statewide Plan 110-24; The National Commission on the Financing of Postsecondary Education, Financing Postsecondary Education in the United States (1973). Tuition assistance is channeled through students. Other assistance is provided directly to schools. The sum of this assistance permits institutions to provide education to students who could not otherwise afford a "market cost." The logic of the state's argument is that immigrants may be denied the benefit of all government assistance to postsecondary education.

II

The citizenship provision of New York's Education Law is invalid under the supremacy clause.

The supremacy clause restricts state power over aliens "to the narrowest of limits." *Hines v. Davidowitz*, 312 U.S. 52, 68 (1941). The principle is fully stated in *Takahashi v. Fish and Game Commission*, 334 U.S. 410, 419 (1948):

> [States] can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states. State laws which impose discriminatory burdens upon the entrance or residence of aliens lawfully within the United States conflict with this constitutionally derived federal power to regulate immigration . . . .

Twice recently this Court has referred to both the supremacy and equal protection clauses when invalidating state restrictions on lawfully admitted aliens. *Graham v. Richardson*, 403 U.S. at 376-80; *Examining Board v. Otero*, 96 S.Ct. at 2283.

Last year the Court sustained a California statute which made it illegal to employ aliens not entitled to lawful residence in the United States if their employment adversely affected lawful resident workers. *DeCanas v. Bica*, 424 U.S. 351 (1976). The California law was directed against aliens who had no right under federal law to enter this country. It was "harmonious" with federal law, *id.* at 356, and there was evidence that Congress contemplated the enactment of "consistent" state regulations, *id.* at 361. The Court specifically noted that "state regulation not congressionally sanctioned that discriminates against aliens lawfully admitted to the country is impermissible if it imposes additional burdens not contemplated by Congress." *Id.* at 358 n.6.

State legislation must yield to national legislation when state law "stands as an obstacle to the accomplishment and execution

of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. at 67. The Court has frequently adhered to this test, even when it has divided on its application. *Perez v. Campbell*, 402 U.S. 637, 650 (1971). The citizenship provisions of New York's education law do, in fact, frustrate the full effectiveness of both the nation's immigration and naturalization laws.

The selection system in the Immigration and Naturalization Act was extensively revised by Congress in 1965. President Johnson's message, proposing the elimination of the Act's national quota provisions, stressed that the administration bill would "serve to promote the reuniting of families — long a primary goal of American immigration policy," and that provisions for the admission of persons with skill or attainment would be "especially advantageous to our society." 111 Cong. Rec. 687 (1965). Both House and Senate Reports emphasized that the "reunification of families is to be the foremost consideration," and that the new selection system would be "fair, rational, humane, and in the national interest." H.R. Rep. No. 745, p. 12, S. Rep. No. 748, p. 13, 89th Cong., 1st Sess. (1965). On the floor the sponsors of the bill emphasized the same theme. Senator Kennedy stated that the bill "reflects our strong humanitarian belief in family unity as well as personal merit." 111 Cong. Rec. 24227 (1965). In the House, Congressman Feighan asserted that "family unity is made the first and foremost objective of the new system," and that those people admitted because of their skills would "substantially benefit the national economy, cultural interests or welfare of the United States." 111 Cong. Rec. 21585 (1965).

Family unity is encouraged by the admission of immediate relatives — children, spouses, and parents of United States citizens — free of numerical limitation. 8 U.S.C. §1151 (1970). Then, for persons in the Eastern Hemisphere, seventy-four per cent of the preferences granted by the Act favor relatives of

citizens or aliens. Unmarried children of citizens have first preference; the spouses and unmarried children of permanent resident aliens have second preference. 8 U.S.C. §1153 (a) (1, 2) (1970). Subsequent preferences are granted to married sons or daughters and brothers or sisters of citizens. 8 U.S.C. §1153 (a) (4, 5) (1970). The admission of skilled individuals, and others prepared to work in fields in which there is a domestic labor shortage, accounts for an additional twenty per cent of preferences. 8 U.S.C. §1153 (a) (3, 6) (1970). To protect domestic workers the Congress requires that intending immigrants in these preference categories, as well as Western Hemisphere immigrants, obtain a certification from the Secretary of Labor that there is a labor shortage for the skills they have and that domestic wages and working conditions will not be adversely affected. 8 U.S.C. §1182 (a) (14) (1970). The certification requirement does not apply to persons admissible as relatives of United States citizens or resident aliens.

Federal law places few limitations on the activities of immigrants. They must register annually, 8 U.S.C. §1302 (1970), and may be deported for certain criminal or political activity. 8 U.S.C. §1251 (1970). Otherwise, neither the Immigration and Naturalization Act, nor the regulations of the Immigration and Naturalization Service, impose restrictions on the participation by immigrants in the social and economic life of this country.

In contrast, there are considerable restrictions on nonimmigrants. Temporary visitors and aliens in transit may not work. 8 C.F.R. §214.1 (c) (1975). Students may work, but only if they receive permission to do so. *Ibid.* If they claim that economic necessity requires them to work, they must establish that it arose after entry. *Id.*, §214.2 (f) (6). A student who wishes to transfer to another school must receive permission from immigration authorities. *Id.*, §214.2 (f) (4).

The purposes and objectives of Congress are to facilitate the immigration of family members and persons with needed skills.

They must register and refrain from proscribed activities which may result in deportation; otherwise, the immigration laws leave them free to live as others do. The breadth of this freedom is emphasized by the contrast to nonimmigrants, whose activities are controlled in great detail by federal immigration law and regulations. State laws which restrict the freedom of immigrants are obstacles to the full accomplishment of federal objectives and must fall under the supremacy clause. It is inconsistent with the federal goal of family unification for New York to impede the education which Mauclet may require to support his family to the best of his abilities.

The problem is well illustrated by state scholarship and grant laws. All but three states have programs to provide tuition or scholarship assistance to students pursuing postsecondary education. These programs vary greatly from one another in the kind and degree of assistance provided. A majority of states impose no citizenship requirement; numbers, however, have some requirement. Some require citizenship by statute; others do so by administrative rule. Survey of state programs, brief appendix A-1. The ability of a financially needy immigrant to receive an education depends on the consequence which the state in which he resides attaches to his immigrant status.

An immigrant may be expected to know basic facts about his status and the governance of this country. He will not be permitted to hold office or vote anywhere in the nation. The national government may limit his access to some federal programs, no matter where he chooses to live. Federalism permits states to have widely different approaches to matters such as higher education. If the degree of state assistance is relevant to an immigrant in choosing his residence, then he must acquaint himself with the laws and programs of different states. In this regard his burden is no different from that of citizens.

An immigrant should not be required, however, to inquire further and learn the catalogue of special disabilities which

individual states have devised for him. It is national law which creates the status an immigrant enjoys. The quality of the nation's invitation to immigrants to make this their permanent home should not be diminished state by state by a host of restrictions and burdens. The constitution requires that these restrictions yield to the supremacy of federal law.

The citizenship provisions of New York's education law also conflict with the full purpose and objectives of the naturalization laws. The conflict arises from the fact that state law imposes financial pressure on immigrants to decide whether or not to petition for naturalization in the minimum amount of time allowed by federal law.

From the first naturalization act in 1790, Congress has required a minimum period of residency in the United States before an immigrant may apply for naturalization. A period of residency "would give a man an opportunity of esteeming the Government from knowing its intrinsic value [and] was essentially necessary to assure us of a man's becoming a good citizen." 1 Annals of Cong. 1147-48 (Gales & Seaton eds. 1790). It would also serve as a period of "probation." *Id.* at 1153. The first act established a two-year residency period. Act of March 26, 1790, 1 Stat. 103. This was extended to five years, act of January 29, 1795, 1 Stat. 414; to fourteen years, act of June 18, 1798, 1 Stat. 566; and back to five years, act of April 14, 1802, 2 Stat. 153. Since 1802 the minimum residency has remained five years for most immigrants; the present statute requires "*at least* five years" of continuous residency. 8 U.S.C. §1427 (a) (1970) (emphasis added).

There has never been an outer limit on the time in which an immigrant may petition for naturalization. The residency provisions of the naturalization law have always been a minimum, never a maximum.

The second naturalization act, in 1795, added a requirement that a declaration of intention to become a citizen be filed three

years prior to a petition for naturalization. 1 Stat. 414. In 1909, Congress required that declarations be filed not less than two, nor more than seven, years before applying for citizenship. Act of June 29, 1906, Pub. L. No. 338, §4 (1-2), 34 Stat. 596. A delay in petitioning for naturalization beyond the seven-year expiration time for declarations of intention meant that a new declaration had to be filed. That in turn meant that an applicant would have to wait two additional years. This provision carried through the major codification of the nationality laws in 1940. Act of October 14, 1940, Pub. L. No. 853, §331, 54 Stat. 1137. The declaration requirement was repealed in 1952; one may still be filed, but it is not required by the naturalization laws. 8 U.S.C. §1445 (f) (1970).

The Congress has considered, utilized, and rejected requirements for early declarations of intention. No statement is required of an applicant prior to his petition, and no petition must be filed at the earliest time of eligibility or by any given time thereafter.

The minimum period of residency serves the national interest by assuring that an applicant has an opportunity to acquaint himself with the nation and its government. It also gives immigrants a period of time in which to consider whether or when to petition. The absence of a deadline assures that immigrants have an opportunity to continue their consideration of citizenship if they have not resolved the issue at the moment of first eligibility. As a case in point, Mauclet does not foreclose the possibility that he may petition for naturalization in the future. He was just not ready to do so at the time the state required it.

There is a peculiar consequence to the state scheme. There are favored groups who are entitled to petition for naturalization before others. Surviving spouses of United States citizens who die during military service may be naturalized without satisfying any period of residency. 8 U.S.C. §1430 (d) (1970). A spouse of a United States citizen may be naturalized after three years of

residency. *Id.*, §1430 (a). Whenever the nation extends the privilege of faster naturalization, New York in turn demands a faster decision: immediately for a surviving spouse, within three years for the spouse of a citizen.

The basic problem with the state's citizenship requirement, however, is that it may impel some people to petition for naturalization before they have satisfactorily resolved the important questions involved in that decision. Their financial needs and their desire for education may introduce elements into a process which is best left free of monetary pressures. Conversely, the citizenship requirement imposes a penalty on those who insist on their right under federal law to consider the matter beyond their first minute of eligibility. Certainly, the Congress has not created a system of financial rewards or punishments as part of its naturalization laws. In these circumstances, the supremacy clause prohibits the states from distorting the process by which immigrants become citizens of this nation.

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted,

Kevin Kennedy
1520 Genesee Building
Buffalo, New York 14202

Michael Davidson
418 John Lord O'Brian Hall
State University of New York
Buffalo, New York 14260
Attorneys for appellee Mauclet

Karen Davidson
of Counsel

We wish to express our appreciation to Stewart O'Brien and Karen Rebrovich, law students at the State University of New York at Buffalo, for their assistance in the preparation of this brief.

APPENDIX A

Survey of Assistance Programs in Other States

SURVEY OF ASSISTANCE PROGRAMS IN OTHER STATES

The 8th Annual Survey of the National Association of State Scholarship and Grant Programs (1976) reports that all states now have student assistance programs except Alaska, Arizona, and Nevada. All available statutes were analyzed. We also requested specific information from program officials in all other states, including copies of rules, regulations, descriptive materials, and application forms. Many states sent documents; others summarized information in letters. Telephone calls were placed to program personnel when written responses were not received or were unclear. On the basis of the documentation available to us at this time, we are unable to verify the presence or absence of citizenship requirements in Colorado, Mississippi, Montana, Nebraska, New Mexico and Utah. Wyoming is also omitted; the program there may not be operational.

Category V contains an ambiguity. The present rule in Connecticut and Rhode Island is that an applicant be either a citizen or have taken steps to become a citizen. The first step toward becoming a citizen is entering this country as a permanent resident, or being adjusted to that status. We do not know whether the acquisition of permanent resident status satisfies the "first steps" requirement of these rules.

I. Statutes which require United States citizenship.

1. Arkansas; State Scholarship Program, 1975 Ark. Acts 238.

2. Florida; Professional and Practical Nursing Education, Fla. Stat. Ann. §§239.47-239.52 (West Supp. 1976).

3. Georgia; State Incentive Scholarships, Ga. Code Ann. §32-3706.1(a) (1976). The citizenship requirement is limited to students attending colleges or universities which are not branches of the University System of Georgia.

Statutes which require citizenship or permanent residence

4. Indiana; Educational Grants and Monetary State Scholarships, Ind. Code Ann. §§20-12-21-5 through 20-12-21-13 (Burns 1973); Freedom of Choice, Ind. Code Ann. §20-12-21-15 (Burns 1973).

5. Minnesota; State Scholarship Program and Grants-in-Aid Program, Minn. Stat. Ann. §§136 A.09-.131 (Supp. 1976).

6. Missouri; Financial Assistance Program, Mo. Ann. Stat. §173.215 (Vernon Supp. 1976).

7. West Virginia; State Scholarship Program, W. Va. Code §§18-22B-1 through 6 (1971).

II. Statutes which require citizenship or permanent residence.

1. Illinois; Grants Program, Ill. Ann. Stat. ch. 122, §30.15.7(a) (Smith-Hurd Supp. 1976); Scholarships Program, Ill. Ann. Stat. ch. 122, §§30.15.5-.7 (Smith-Hurd Supp. 1976).

2. Texas; Texas Assistance Grants, Tex. Educ. Code Ann. tit. 3, §56.014 (Vernon Supp. 1976). The statute requires that a student be a resident of Texas in order to be eligible for assistance. Texas Educ. Code Ann. tit. 3, §54.057 (Vernon 1972) requires that for an alien to receive resident status for fee purposes he must be in the United States under a visa permitting permanent residence or file a declaration of intent to become a United States citizen. Only a permanent resident may file a declaration of intention. 8 U.S.C. §1445(f) (1970).

3. Washington; Student Financial Aid Program, Wash. Rev. Code Ann. 28B.10.800-824 (1970). Students must be domiciled in Washington. *Id.*, 28B.10.810(2). "Any person not a citizen of the United States cannot establish a Washington domicile until such person is eligible and has applied for an immigration visa. . . ." 28B.15.013(4) (e).

III. Statutes which omit any requirement of citizenship.

A. Absence of citizenship requirement confirmed by published rules or policies.

1. Alabama; The Operating Procedures for the Alabama Student Assistance Program §5.8.2. A student is eligible if he is either a United States citizen or is in the United States for other than a temporary purpose and intends to become a permanent resident.

2. Hawaii; State Scholarship and Merit Scholarships, Haw. Rev. Stat. §304-15 (Supp. 1974). The statute requires residence. Board of Regents Rules Governing Determinations of Residency IX provides that an alien shall be classified as a resident only upon his admission to the United States for permanent residence.

3. North Dakota; Student Financial Assistance Program, N.D. Cent. Code §15-62.2-01 through 04 (Supp. 1975). North Dakota Student Assistance Program Application Form.

4. Ohio; Instructional Grants, Ohio Rev. Code Ann. §3333.12 (Page Supp. 1975). The Ohio Instructional Grants Program Rules and Regulations §B-3.c: "any alien holding an immigration visa . . . shall be considered as a resident of the State of Ohio for Ohio Instructional Grant purposes in the same manner as any other student."

5. South Carolina; Tuition Grant, S.C. Code §§22-91 to -95 (Supp. 1975) 1977-78 South Carolina Tuition Grant Application.

B. Absence of citizenship requirement confirmed by communication from program officials.

1. Idaho; Scholarship Program, Idaho Code §33-4303 through 4315 (Supp. 1976).

2. Iowa; Scholarship Program, Iowa Code Ann. §261.2(4) (West 1964); Tuition Grant Program, Iowa Code Ann. §§261.9-261.16 (West 1964); Vocational-Technical Grant, Iowa Code Ann. §261.17 (West Supp. 1975).

3. Maine; Tuition Equalization Fund, Me. Rev. Stat. tit. 20, §§2311-14 (Supp. 1976).

4. Massachusetts; General Scholarship, Mass. Gen. Laws Ann. ch. 15, §1D (West Supp. 1975).

5. North Carolina; Student Assistance Program, N.C. Gen. Stat. §§116-209.17 through .20 (1975).

6. New Hampshire; New Hampshire Incentive Program N.H. Rev. Stat. Ann. §§188-D:10 through 188-D:13 (Supp 1976).

7. New Jersey; State Competitive Scholarships, N.J. Stat. Ann. §18 A:71-1 to -15 (West 1968); Education Incentive Grants, *id.*, §§18 A:71-16 to -26; Tuition Aid Grants, *id.*, §18 A:71-41 to -49 (West Supp. 1976).

8. Oregon; Need Grants, Or. Rev. Stat. §348.260 (1973); Scholastic Grant, *id.*, §§348.230 to .250.

9. South Dakota; Student Incentive Grants, S.D. Compiled Laws Ann. §13-55 A (1975).

10. Texas; Texas Public Educational Grant, Tex. Educ. Code Ann. tit. 3, §56.035 (Vernon Supp. 1976).

11. Wisconsin; Student Financial Aid Programs, Wis. Stat. Ann. §§39.26-.47 (West Supp. 1976).

C. Presence of citizenship requirement confirmed by state publication.

1. Michigan; State Scholarship Program, Mich. Comp. Laws §§390.971-.980 (1976); Tuition Grant, Mich. Comp. Laws §§390.991-.999 (1976); Michigan Department of

Education, State Financial Aid Programs Can Help You Attend College.

D. Presence of citizenship requirement indicated by communication from program officials.

1. Louisiana; State Student Incentive Grant, La. Rev. Stat. §17: 3023.5 (West Supp. 1975).

2. Maryland; General Scholarship Program, Md. Code Ann. 77A §57 (1975).

E. Additional statutes which omit any requirement of citizenship. No other information available to indicate whether or not a requirement has been added by rule or policy.

1. Connecticut; Restricted Educational Achievement, Conn. Gen. Stat. Ann. §10-116h (West Supp. 1976).

2. Florida; Student Assistance Grants, Fla. Stat. Ann. §239.461 (West Supp. 1976); Florida Regents Scholars, Fla. Stat. Ann. §239.451 (West Supp. 1976).

3. Georgia; State Scholarship, Ga. Code Ann. §§32-3101 to 3110 (1976); State Incentive Scholarships, *id.*, §32-3706.1(a). The incentive scholarships statute establishes different standards for public and private schools. Students attending a branch of the University System of Georgia need only be residents of the state.

4. Illinois; General Assembly Scholarships, Ill. Ann. Stat. ch. 122, §30-9 (Smith-Hurd Supp. 1976).

5. Kansas; State Scholarship, Kan. Stat. §§72-6801 to 15 (Supp. 1975).

6. Kentucky; Assistance to Private College Students, Ky. Rev. Stat. §§164.780 and 164.785 (Supp. 1976); Other Grants and Scholarships, *id.*, §§164.740 to 764.

7. Oklahoma; Tuition Aid Grant, Okla. Stat. Ann. tit. 70 ch. 3, §626.1 to 10 (Page 1972).

8. Tennessee; Tuition Grants, Tenn. Code Ann. §§49-5013 to 5021 (Supp. 1976).

9. Vermont; Scholarship Program, Vt. Stat. Ann. tit. 16, §§2821-28 (Supp. 1976).

10. Virginia; Virginia Tuition Assistance Grant and Loan Act, Va. Code §§23-38.11 to .18 (Supp. 1976).

IV. Statutes which require citizenship in some circumstances and permanent residence in others.

1. California; California Educational Grant Program, Cal. Educ. Code §§40400 through 40415 (West 1976). Sec. 40404 requires that "a Cal. Grant recipient shall be a citizen of the United States or, if he is under 21 years of age and not a citizen of the United States, either he or his parent or parents must have been admitted to the United States on a permanent resident visa." As a practical matter, this means that most undergraduate permanent residents will qualify for assistance.

V. Programs for which a statute or rule requires that applicants be citizens or taking steps to become citizens.

1. Connecticut; State Scholarship Program, Conn. Gen. Stat. Ann. §10-116b to 116d (West Supp. 1976). The statute contains no citizenship requirement. The state's informational pamphlet states that an applicant must be either a citizen or taking steps to become a citizen.

2. Pennsylvania; The Higher Education Grant Program, Penn. Stat. Ann. tit. 24, §§5151 to 5159 (Purdon Supp. 1976). The statute requires that an applicant be either a citizen or taking steps to become a citizen. A legal opinion of the Penn-

sylvania Attorney General, dated January 15, 1973, states that applicants for state scholarships and grants should be evaluated without regard to citizenship and this portion of the statute be considered unconstitutional and unenforcible. The absence of a citizenship requirement is confirmed by the most recent state publication describing the Higher Education Grant Program, Keys to Student Aids for Pennsylvanians.

3. Rhode Island; State Scholarship Program, R.I. Gen. Laws, §16-37-1 to -31 (1969). The statute contains no citizenship requirement. Rhode Island State Scholarship Program Rules and Regulations I A (revised August 1970) require that an applicant be either a citizen or taking steps to become a citizen.

VI. Statutes which define residency in terms of citizenship.

1. Delaware; Higher Education Scholarship, Del. Code tit. 14, §§3401-05 (1974). To be eligible, a student must be a resident of the state; there is no express citizenship requirement. However, section 3403(b) (1) states the residence of a student under 21 years of age must be "determined by the legal residence of his parent . . . who must have qualified as a registered voter in Delaware. . . . In the case of a student over 21 years of age, he must have qualified as a registered voter."

APPENDIX B

Legislative and Executive Documents

LEGISLATIVE AND EXECUTIVE DOCUMENTS

1. Joint Legislative Committee to Revise and Simplify the Education Law, Higher Education Staff Report No. 8 (February 21, 1969). This document, as it is now found in the New York Library, contains a number of handwritten deletions and insertions. The document is reproduced in this appendix to show these deletions and insertions. The tables on B-3 and B-4 have been photographed; an X has been placed over Proposal No. 1 on B-5 to indicate a similar mark on the document presently on file. The X indicates that Proposal No. 1 was superseded on February 22, 1969 by the memorandum reprinted on B-13. Staff Report No. 8 is on file in the veto jacket for S.5676-A, 1969 Session.

2. Joint Legislative Committee to Revise and Simplify the Education Law (February 22, 1969). This document also, as it is now found in the New York State Library, contains handwritten additions and alterations. One handwritten addition is photographed on B-13; the italicized entries on B-14 reflect handwritten amendments. The document is on file in the veto jacket for S.5676-A.

3. Joint Legislative Committee to Revise and Simplify the Education Law, Revised Higher Education Staff Report No. 9 (April 23, 1969). Filed in the bill jacket for 1969 N.Y. Laws ch. 1154.

4. Joint Legislative Committee to Revise and Simplify the Education Law, Senate Memorandum S.5675 (April 30, 1969). Filed in the bill jacket for 1969 N.Y. Laws ch. 1154.

5. Budget Report on Bills, Senate 4606 B (May 13, 1969). Filed in the bill jacket for 1969 N.Y. Laws ch. 1154.

6. State Education Department, Memorandum recommending approval of S.5606 B and S. 5676 A. Filed in bill jacket for 1969 N.Y. Laws ch. 1154.

JOINT LEGISLATIVE COMMITTEE TO REVISE AND SIMPLIFY THE EDUCATION LAW, HIGHER EDUCATION STAFF REPORT NO. 8 (FEBRUARY 21, 1969).

S 4606 PROPOSED REVISION TO
ARTICLE 13 EDUCATION LAW
A 6491 SCHOLARSHIPS, FELLOWSHIPS AND
SCHOLAR INCENTIVES

The attached bill is both a recodification and revision of Article 13 of the Education Law, which relates to financial assistance to New York State college students.

This bill clarifies the present law, removes obsolete language, and makes its provisions succinct and more orderly. It reduces the number of words from about 30,000 to 9,000 and the number of sections from 31 to 24.

Substantive Changes

The following substantive changes in the proposed law are recommended:

Joint Legislative Committee to Revise and Simplify the Education Law, Higher Education Staff Report No. 8 (February 21, 1969).

Proposal No.	Purpose	Estimated 1st Year Cost
	I. SCHOLAR INCENTIVE	
A. 1	Eliminate minimum scholar incentive grant.	Savings of $8,000,000
B. 2	Increase the value of undergraduate awards to low-income students and reduce the value of graduate awards.	-3,500,000
C. 3	Allow Regents to establish more appropriate academic eligibility standards for scholar incentive aid.	75,000
D. 4	Provide that U. S. War Orphan benefits do not reduce scholar incentive.	40,000
E. 5	Require U. S. citizenship for scholar incentive.	Savings of 10,000

Joint Legislative Committee to Revise and Simplify the Education Law, Higher Education Staff Report No. 8 (February 21, 1969).

II. REGENTS COLLEGE SCHOLARSHIPS

F. 6	Allow use of regents college scholarships for five years.	$ 80,000
G. 7	Eliminate regents college scholarship examinations abroad.	0

III. NURSING

H. 8	Extend scholar incentive aid and regents college scholarships to students in hospital nursing schools.	700,000
I. 9	Permit use of basic nursing scholarships for five years.	5,000
J. 10	Permit use of basic nursing scholarships in either collegiate or hospital nursing programs.	0
K. 11	Allocate basic nursing scholarships on the basis of population.	0

IV. REGENTS WAR SERVICE SCHOLARSHIPS

L. 12	Establish 600 additional regents war service scholarships.	105,000*
M. 13	Allocate war service scholarships on the basis of population.	0
	Total Net Savings	$3,505,000

*This is an increase of 300 scholarships over the Governor's request. (S 1693, A 2306)

Joint Legislative Committee to Revise and Simplify the Education Law, Higher Education Staff Report No. 8 (February 21, 1969).

Further comments and the budgetary implications of the recommended substantive changes are contained on the following pages of this staff report.

I. SCHOLAR INCENTIVE

A. *Proposal No. 1:* Eliminate the minimum *scholar incentive* award for students whose parental net taxable income is in excess of $10,000. This is an average gross income for a family of four of $13,800.

Section of Proposed Bill: §611 sub 3

Comment: The present law provides a minimum scholar incentive award of at least $100 a year to all qualified students for undergraduate study; $200 for first year graduate study; and $400 for other graduate study. By eliminating this minimum from high income students, additional funds would be available to assist more needy students. It is estimated that 60,000 minimum awards would be abolished and that some of the funds would be redistributed to help 53,000 low income students (See Proposal No. 2).

Budgetary Implication: This proposal would save $8,000,000, part of which then could be redistributed to students of lower income families.

B. *Proposal No. 2:* Increase the value of undergraduate awards to low income students and reduce the value of graduate awards.

Section of Proposed Bill: §611 sub 3

Comment: At present, the amount of scholar incentive payment is dependent upon a three way classification of

parental income. This proposal establishes a five way classification of income which, in effect, would increase support for low income undergraduate students by raising the value of the maximum award from $500 to $600, and by increasing the next largest award from $200 to $300. Also, the income brackets are changed to reflect a modest inflationary adjustment. Awards for undergraduate and graduate study are identical. Under this proposal some 8000 graduate students would receive less money than they now receive. The present and proposed award structures are:

	Present Annual Awards			
*Average Gross Income	Selected Net Income	Under-grad.	1st Yr. Grad.	Other Grad.
Under $4,700	Under $1,800	$500	$600	$800
4,700-11,000	1,800-7,500	200	300	600
Over 11,000	Over 7,500	100	200	400

	Proposed Annual Awards			
*Average Gross Income	Selected Net Income	Under-grad.	1st Yr. Grad.	Other Grad.
Under $4,900	Under $2,000	$600	$600	$600
4,900-9,300	2,000-6,000	300	300	300
9,300-11,600	6,000-8,000	200	200	200
11,600-13,800	8,000-10,000	100	100	100
Over 13,800	Over 10,000	0	0	0

*Family of four.

Budgetary Implications: The estimated cost of this proposal is $3,500,000. The cost of increasing lower income awards is $5,500,000, but is partially offset by a savings of $2,000,000 realized from decreasing the value of graduate awards.

C. *Proposal No. 3:* Allow the Regents to establish appropriate academic standards for scholar incentive assistance for the first semester of college.

Section of Proposed Bill: §611 sub 1

Comment: The present law requires the Regents to establish criteria for academic qualification for the first semester of undergraduate or graduate study based on previous academic record or test scores, entirely apart from the college admission criteria. After the first semester, certification of probable success by the college establishes student eligibility.

The present requirement regarding first semester eligibility creates an inordinate amount of administrative work in the Education Department and places a heavy burden on the colleges and the student. Also, many deserving students may be deprived of scholar incentive assistance for the first semester of study. In particular, disadvantaged youths who may not have followed the usual college preparatory program are often denied first semester aid because they do not meet usual academic and test criteria. About one-third of the students in community colleges do not receive scholar incentive assistance, and it is believed that the present unrealistic first semester requirement is largely responsible.

This proposal would allow the Regents to accept matriculation into college as satisfying first semester eligibility for aid purposes, and make it possible for many needy students to obtain additional assistance.

Budgetary Implications: The estimated cost of this change $75,000.

D. *Proposal No. 4:* Provide that the receipt of U.S. War Orphan benefits, like G. I. benefits, shall not reduce the amount of *scholar incentive* aid.

Section of Proposed Bill: §611 sub 4

Comment: The present law provides that scholar incentive payments shall be limited by U.S. War Orphan benefits, but not by G.I. benefits. Since both these types of benefits are similar, they should be treated the same way.

Budgetary Implication: The estimated cost is $40,000.

E. *Proposal No. 5:* Require United States citizenship for *scholar incentive* assistance.

Section of Proposed Bill: §602 sub 2

Comment: Citizenship is presently required to be eligible for all award programs except scholar incentive. It is proposed that citizenship be made a uniform requirement. About fifty students would be affected by this change.

Budgetary Implication: The estimated savings is $10,000.

II. REGENTS COLLEGE SCHOLARSHIPS

F. *Proposal No. 6:* Allow use of *regents college scholarships* for five years of undergraduate study, if the program normally requires five years for completion.

Section of Proposed Bill: §612 sub 4

Comment: Regent college scholarship winners may now use their awards for only four years. Thus, award winners enrolled in programs normally requiring five years (e.g. pharmacy and architecture) do not receive the award for the duration of the college program. It is proposed that the

award period for regents college scholarships be made five years, thereby making it consistent with that of the scholar incentive program.

Budgetary Implication: The estimated annual cost of this change is $80,000.

G. *Proposal No. 7:* Delete requirements that *regents college scholarship* examination be administered to candidates abroad.

Comment: The present law requires that the regents scholarship examination be given to eligible students who are abroad in spite of the fact that such students may take this examination after entering college without loss of benefits. It is administratively difficult to give the exam abroad, and adequate security arrangements cannot be guaranteed.

Budgetary Implication: Small savings from reduction in administrative workload.

III. NURSING

H. *Proposal No. 8:* Extend *scholar incentive assistance and regents college scholarships* to students enrolled in hospital school nursing programs.

Section of Proposed Bill: §602 sub 5

Comment: Under the present statute, students who attend hospital nursing schools are not eligible to receive scholar incentive or regents college scholarship benefits. Because of the critical need for trained nurses, the removal of this restriction is recommended. Nursing programs at hospital schools are three years in length and must be approved by the Board of Regents.

Budgetary Implication: The estimated cost of this change is $700,000. About 6000 student nurses at 54 hospitals would benefit. The recruitment of student nurses by hospital nursing schools would be facilitated.

I. *Proposal No. 9:* Permit *basic nursing scholarships* to be used for five years if the program normally requires five years for completion.

Section of Proposed Bill: §621 sub 3

Comment: The present law limits use of basic nursing scholarships to four years. Inasmuch as some students are enrolled in five year programs, it is recommended that such students be aided for the duration of the total program instead of having assistance curtailed in the last year of the program. This would enable students to seek additional training which would qualify them as teachers of nursing, thereby reducing the shortage of such people.

Budgetary Implication: The estimated cost is $5,000.

J. *Proposal No. 10:* Permit any of the 600 *basic nursing scholarships* to be used in either a collegiate or a hospital nursing program.

Section of Proposed Bill: §621 sub 1

Comment: The present statute limits the use of the 600 basic nursing scholarships to 300 in collegiate nursing programs and 300 in hospital nursing programs. Such limitation has been found to be unnecessary, restrictive and confusing and increases the high rate of declination of these awards which has resulted in failure to award all authorized

scholarships. The proposed change would provide a broader choice of programs to students.

Budgetary Implication: No added cost.

K. *Proposal No. 11:* Allocate *basic nursing scholarships* on the basis of population rather than on the basis of assembly districts as they existed in 1964. Use 1968-69 allocation as the save-harmless.

Section of Proposed Draft: §621 sub 2

Comment: It no longer seems reasonable to allocate these scholarships on the basis of 1964-65 assembly districts prior to redistricting. The proposed change would allocate basic nursing scholarships in relation to the proportion of a county's population to the total population of the state.

The save-harmless clause insures that no county would "lose" scholarships. The real import of this bill will be felt if the number of such scholarships is increased.

Budgetary Implication: No added cost.

IV. REGENTS WAR SERVICE SCHOLARSHIPS

L. *Proposal No. 12:* Increase the amount of *regents war service scholarships for veterans* from 300 to 600.

Section of Proposed Bill: §614 sub 1

Comment: At present, there are 300 war service scholarships in use. Unless new scholarships are established there will be no opportunity for returning veterans of the Viet Nam conflict to use such scholarships. The Governor has requested 300 such scholarships for 1969-70 (S 1693, A

Joint Legislative Committee to Revise and Simplify the Education Law, Higher Education Staff Report No. 8 (February 21, 1969).

2306) at a cost of $105,000. In 1968-69, when the last 300 veterans scholarships were awarded, over 1400 applicants filed for these scholarships.

Budgetary Implication: The estimated cost is $105,000.

M. *Proposal No. 13:* Allocate *war service scholarships* on the basis of population rather than on the basis of assembly districts as they existed in 1964. Use the 1967-68 allocation as a save-harmless.

Section of Proposed Bill: §614 sub 2

Comment: Same as No. 11.

Budgetary Implication: No added cost.

JOINT LEGISLATIVE COMMITTEE TO REVISE AND SIMPLIFY THE EDUCATION LAW (FEBRUARY 22, 1969).

B - 60,000 students now receiving minimum grant
50 - 60,000
$6,000,000 savings on min. undergrad. award if dropped today

S 4606-A
A 6491-A

This memorandum supercedes Proposals A1 and B2 of Higher Education Staff Report No. 8, February 21, 1969.

PURPOSE

The purpose of this bill is to establish a new scholar incentive formula and to make other changes regarding the use and eligibility of scholar incentive and regents college scholarships.

Equally important, this bill negates the need for a five percent cutback in last quarter 1968-69 financial assistance and for all 1969-70 awards.

This bill provides for the following:

(1) The present scholar incentive formula for undergraduates, including the minimum $100 award, would still be in effect through the school year 1971-72 for students currently receiving such undergraduate awards.

(2) A modified scholar incentive formula would be in effect for beginning freshmen in school year 1969-70. This formula would be identical to the present one for students with incomes under $10,000, however, undergraduate students with incomes in excess of $10,000 would not receive any award. By eliminating the $100 grant for students with incomes over $10,000, this

would save $2 million in school year 1969-70 and $1.5 million in fiscal year 1969-70.

(3) For freshman students, ~~awards~~ *beginning in awards* in 1970-71 would be paid on the basis of a new formula. (see attached memo)

(4) For graduate students, a new graduate scale would be put into effect in school year 1969-70. This scale reduces the value of graduate awards and eliminates awards for students with incomes over $10,000. The 1969-70 school year saving of this proposal is $4,100,000 and the fiscal year saving is $3,100,000.

COMMENTS:

The thrust of the proposal is to save harmless all present undergraduates, put graduates on the new formula immediately, and phase in the new formula for undergraduates, beginning school year 1970-71 on a year-by-year basis.

OTHER CHANGES:

This bill also extends scholar incentive to hospital nursing schools and private business schools. It also permits use of scholarships for five years, establishes 600 war service scholarships and eliminates the limitation as to where basic nursing scholarships must be used, although they still must be used in the State.

FISCAL YEAR 1969-70 SAVINGS

(In Millions)

	Savings	Increase
1. Eliminate minimum award for freshmen over $10,000 in 1969-70	$ 1.5	
2. New formula for graduate students (including reduced awards and loss of awards over $10,000 in 1969-70)	3.1	
3. New costs		$ 1.1*
	$ 4.6	$ 1.1

$ 4.6 Savings
1.1 New Costs

$ 3.5 Fiscal Year Savings

SUMMARY OF NEW COSTS

Include U.S. War Orphan Benefits for Scholar Incentives	$ 21,500
Allow Regents College Scholarships for Five Years	50,000
Scholar Incentives for Hospital Nursing Students	505,000
Allow Basic Nursing for Five Years	3,500
Additional 300 War Service Scholarships	80,000
Scholar Incentives for Private Business Schools	440,000
	$1,100,000

JOINT LEGISLATIVE COMMITTEE TO REVISE AND SIMPLIFY THE EDUCATION LAW, REVISED HIGHER EDUCATION STAFF REPORT NO. 9 (April 23, 1969).

S 4606-B PROPOSED REVISION TO
ARTICLE 13 EDUCATION LAW
A 6491-A SCHOLARSHIPS, FELLOWSHIPS AND
SCHOLAR INCENTIVES

This bill is both a recodification and a revision of Article 13 of the Education Law, which relates to financial assistance to New York State college students.

This bill clarifies the present law, removes obsolete language, and makes its provisions succinct and more orderly. It reduces the number of words from about 30,000 to 9,000 and the number of sections from 31 to 24.

Major Substantive Change:

The major change contained in this proposal affects the formula by which college students receive scholar incentive assistance.

At present all students are eligible for scholar incentive assistance, regardless of income level. This bill would gradually phase in a new formula which would eliminate the minimum award for higher income undergraduate students. Undergraduates who are now receiving the minimum award would continue to do so until they receive their bachelors degrees.

In the 1969-70 school year and in subsequent school years, beginning freshmen with family incomes in excess of $20,000 would not receive scholar incentive assistance. In the 1970-71 school year those new students with family incomes under $8,000 would receive $100 more than similar students now

receive. Students with parental incomes between $8,000 and $20,000 would continue to receive $100.

Beginning with the 1970-71 school year and for the following three school years, the new scholar incentive formula would be applied to an additional group of incoming freshmen students. Thus, by 1974-75 all students would be on the new formula.

Beginning with the 1969-70 school year, graduate students would be eligible to receive scholar incentive assistance on the new formula. Graduate students with incomes over $20,000 would not receive assistance and all other graduate students would receive less money than they now receive.

Present Annual Awards

*Average Gross Income	Selected Net Income	Under-grad.	1st Yr. Grad.	Other Grad.
Under $4,700	Under $1,800	$500	$600	$800
4,700-11,000	1,800-7,500	200	300	600
Over 11,000	Over 7,500	100	200	400

Proposed Annual Awards

*Average Gross Income	Selected Net Income	Under-grad.	1st Yr. Grad.	Other Grad.
Under $4,900	Under $2,000	$600	$600	$600
4,900-9,300	2,000-6,000	300	300	300
9,300-11,600	6,000-8,000	200	200	200
11,600-25,000	8,000-20,000	100	100	100
Over 25,000	Over 20,000	0	0	0

*Family of four.

Joint Legislative Committee to Revise and Simplify the Education Law, Revised Higher Education Staff Report No. 9 (April 23, 1969).

Other Substantive Changes:

Other revisions contained in this proposal are described in this Committee's Staff Report No. 8. These provide for (1) the use of regents college scholarships for 5 years; (2) the use of basic nursing scholarships for 5 years; (3) scholar incentive assistance to students in hospital nursing schools; (4) scholar incentive assistance to students in two-year registered private business schools; (5) concurrent use of U.S. war orphan benefits and scholar incentive assistance; (6) 300 additional war service scholarships raising the total to 600; (7) the regents to establish more appropriate academic eligibility standards for scholar incentive assistance; (8) U.S. citizenship requirement for scholar incentive assistance (conforming to state scholarship provisions); (9) eliminating regents college scholarship examinations abroad; (10) basic nursing scholarships to be used in either collegiate or hospital nursing programs; (11) allocating basic nursing scholarships and war service scholarships on the basis of population rather than assembly districts, provided, however, that each assembly district be guaranteed the same number of basic nursing and war service scholarships that it has at present. The above changes to the State's financial aid program to college students would take effect in the 1969-70 school year.

Fiscal Year Implications:

This bill would save 2.2 million dollars in the 1969-70 fiscal year (see attached). Since this bill saves 2.2 million dollars, a 5% cut across the board on scholar incentive and regents college scholarship awards would not be necessary.

Joint Legislative Committee to Revise and Simplify the Education Law, Revised Higher Education Staff Report No. 9 (April 23, 1969).

FISCAL YEAR 1969-70 SAVINGS

(In Millions)

	Savings	Increase
1. Eliminate minimum award for freshmen over $20,000 in 1969-70	$ .5	
2. New formula for graduate students (including reduced awards and loss of awards over $20,000 in 1969-70)	2.8	
3. New costs		$ 1.1*
	$ 3.3	$ 1.1

$ 3.3 Savings
1.1 New Costs

$ 2.2 Fiscal Year Savings

SUMMARY OF NEW COSTS

Include U.S. War Orphan Benefits for Scholar Incentives	$ 21,500
Allow Regents College Scholarships for Five Years	50,000
Scholar Incentives for Hospital Nursing Students	505,000
Allow Basic Nursing for Five Years	3,500
Additional 300 War Service Scholarships	80,000
Scholar Incentives for Private Business Schools	440,000
	$1,100,000

JOINT LEGISLATIVE COMMITTEE TO REVISE AND SIMPLIFY THE EDUCATION LAW, SENATE MEMORANDUM S.5676 (APRIL 30, 1969).

SENATE MEMORANDUM S 5676

A CHAPTER AMENDMENT TO S 4606-B

(A bill to amend the education law
in relation to scholar incentives,
scholarships, and fellowships)

PURPOSE: This bill relates to the scholarship, fellowship and scholar incentive proposal introduced by the Joint Legislative Committee to Revise and Simplify the Education Law. The Joint Legislative Committee's proposal, as contained in S 4606-B, would establish a new scholar assistance formula for students attending New York State institutions of Higher Education.

This bill modifies the Joint Legislative Committee's proposed formula as contained in S 4606-B by eliminating the minimum $100 award for all undergraduate students with a net taxable family income of over $20,000, effective in the 1969-70 school year.

COMMENT: As proposed in S 4606-B, the Joint Legislative Committee's scholarship bill, all undergraduate students who have previously received scholar incentive assistance would continue to receive such aid regardless of family income status. New students with a net taxable family income of over $20,000 would not receive the minimum $100 award.

This bill would delete the $100 award for *all* undergraduate students with a net taxable family income of over $20,000 *even if such students previously received the $100 award.*

FISCAL IMPLICATIONS: This bill would save $900,000 in the 1969-70 fiscal year. It should be noted that S 4606-B has a fiscal year savings of 2.2 million. The combined effect of both these bills would save 3.1 million in the 1969-70 fiscal year.

BUDGET REPORT ON BILLS
SENATE 4606-B
(MAY 13, 1969)

30-Day Bill

Introduced by:
Messrs. Dominick, Bronston

Law: Education Sections: Article 13

Division of the Budget recommendation on the above bill:

Approve: ..... X ..... Veto: .....

No Objection: ..... No Recommendation: .....

1. *Subject and Purpose:* This bill will establish a new scholar incentive award schedule and make other changes regarding the use and eligibility of Scholar Incentive Awards and Regents College Scholarships.

2. *Summary of provisions of bill:*

   Bill Section 1: Repeals present Article 13 of the Education Law related to Scholarships, Fellowships, Scholar Incentive Awards and other award programs for higher education.

   Bill Section 2: Repeals present Section 5710 of the Education Law related to Regents Scholarships at Cornell University.

   Bill Section 3: Recodifies into a new Article 13 and generally simplifies present provisions related to Scholarships, Fellowships and Scholar Incentive Awards.

   The present schedule of Scholar Incentive Awards in relation to net taxable income would be replaced by a new schedule in relation to net taxable income as follows:

Present Annual Scholar Incentive Awards

Net Taxable Income	Under-grad.	1st Yr. Grad.	Other Grad.
Under $1,800	$500	$600	$800
1,800-7,500	200	300	600
Over 7,500	100	200	400

Proposed Annual Scholar Incentive Awards

Net Taxable Income	Under-grad.	1st Yr. Grad.	Other Grad.
Under $2,000	$600	$600	$600
2,000-6,000	300	300	300
6,000-8,000	200	200	200
8,000-20,000	100	100	100
Over 20,000	0	0	0

The new schedule of payments as it pertains to undergraduates would be modified, however, by the provisions contained in bill Sections 4 and 5.

Eligibility for the use of the Scholar Incentive Awards is extended, under this bill, to (a) students who receive United States War Orphan benefits, (b) students in hospital nursing schools and, (c) students in an approved two-year program in a registered private business school.

The number of Regents College Scholarships that may be awarded each year is fixed at 18,843; Scholarship use is extended to five years (instead of the present four) for programs of study that normally require five years; there is no change, however, in the amount of the Scholarships in relation to net taxable income.

The number of Regents War Service Scholarships for Veterans that may be annually awarded is fixed at 600 compared to the 300 that are currently awarded.

The Regents Scholarships in Cornell University are brought into the new Article 13 and made subject to its general provisions.

Bill Section 4: The present scholar incentive schedule of payments in relation to income, including the minimum $100 award would remain in effect through the school year 1971-72 for undergraduate students currently receiving such undergraduate awards.

Bill Section 5: A modified scholar incentive schedule of payments in relation to income would be in effect for beginning freshmen in school year 1969-70. This schedule would be unchanged from the present where income did not exceed $20,000. Where income exceeds $20,000 the award would be eliminated.

Bill Section 6: The bill would become effective July 1, 1969.

3. *Prior legislative history:* Not relevant to the consideration of this bill.

4. *Arguments in support of bill:* This bill was introduced at the request of the Joint Legislative Committee to Revise and Simplify the Education Law. The recodification of Scholarships, Fellowships and Scholar Incentive Awards carries out the Committee's work in this regard.

   The bill extends use of the Scholar Incentive Awards to students in hospital nursing schools and private business schools and doubles the number of War Service Scholarships. By eliminating the minimum scholar incentive awards for students whose parental net taxable income is in excess of

Budget Report on Bills, Senate 4606-B (May 13, 1969).

$20,000, additional funds would be made available for redistribution to assist more needy students.

5. *Possible objections to bill:* Public reaction can be expected on behalf of graduate students whose awards will be reduced beginning in 1969-70 and on behalf of those becoming undergraduates in 1970-71 and thereafter who would no longer be eligible for a minimum scholar incentive award.
6. *Other state agencies interested:* Education Department.
7. *Position of other organizations:* Not available.
8. *Budget implications:* The net fiscal effect of this bill during the State fiscal year 1969-70 is a saving of $2.2 million. It offers an opportunity to utilize the savings as a partial alternative to a five per cent reduction in individual grants to attain the expenditure reduction mandated in the supplemental budget.
9. *Recommendation:* Any action on this bill Senate 4606B should be taken only with simultaneous consideration of Senate bill 5676A which would amend this bill by removing the save harmless for all present undergraduates contained in bill Section 4 of S.4606B and provide a further savings of about one million dollars.

The Division of the Budget recommends approval of S.4606B on the basis of No. 4 above and on account of the alternative offered in No. 8 above.

T. N. Hurd
Date: May 13, 1969 Examiner: Harold Sigsbee

Disposition: Chapter No. Veto No.

STATE EDUCATION DEPARTMENT MEMORANDUM RECOMMENDING APPROVAL OF S. 4606-B and S. 5676-A

May 14, 1969

TO: Counsel to the Governor

FROM: Robert D. Stone

SUBJECT: S 4606-B
S 5676-A

RECOMMENDATION: APPROVAL

REASONS FOR RECOMMENDATION:

Both bills were sponsored by the Joint Legislative Committee to Revise and Simplify the Education Law.

With the exception of providing scholar incentive aid for students attending registered private business schools, the formula for scholar incentive aid and the provision of additional war service scholarships with an increase in the amount of such award, these bills represent enactment of a substantial proportion of this Department's program as advocated by the Board of Regents.

In addition to revising and simplifying the law relating to student financial assistance, these bills provide an estimated savings of $3,100,000.00 for the State fiscal year 1969-70.